



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for a monetary order in the amount of \$5,953.64 for unpaid rent or utilities and for compensation for damage or loss under the Act, regulation or tenancy agreement. The landlord is also seeking the recovery of the cost of the filing fee under the Act.

The landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated May 22, 2020 (Notice of Hearing), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and documentary evidence were served on the tenant via two methods of service, the first being by registered mail on May 23, 2020 to the mailing address provided by the tenant on their rental application and which was also listed on the tenant's driver's license submitted in evidence. A registered mail tracking number was submitted in evidence and has been included on the cover page of this decision for ease of reference. The second method was by email in accordance with the COVID related order in place at the time the email was sent on May 23, 2020. Given the above, I find the tenant was sufficiently served in accordance with the Act and given that the tenant did not attend the hearing, I find that this matter is unopposed by the tenant.

Preliminary and Procedural Matter

The landlord confirmed the email addresses for the parties at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. The decision will be emailed to the tenant via the email address confirmed by the landlord during the hearing.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The fixed-term tenancy began on November 1, 2019 and was not scheduled to revert to a month to month tenancy until November 30, 2020. Monthly rent was \$1,250.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$625.00, which the landlord continues to hold. The landlord testified that the tenant failed to pay a pet damage deposit.

The landlord's monetary claim of \$5,953.64 is summarized in the spreadsheet submitted in evidence as follows:

<i>(Damage Deposit)</i>	<i>(-\$625.00)</i>
November 2019 Rent	\$1,250.00
November 2019 Rent – Late Payment Fee	\$25.00
November 1 – November 25 BC Hydro Bill Portion	\$50.62
November 1 – November 25 BC Hydro Bill Portion Late Fee	\$25.00
December 2019 Rent	\$1,250.00
December 2019 Rent – Late Payment Fee	\$25.00
November 1- December 20 Surrey Water Bill Portion	\$11.90
November 1 - December 20 Surrey Water Bill Portion Late Payment Fee	\$25.00
January 2020 Rent	\$1,250.00
January 2020 Rent – Late Payment Fee	\$25.00
February 2020 Rent	\$1,250.00
February 2020 Rent – Late Payment Fee	\$25.00
March 2020 Rent	\$766.00

March 2020 Rent – Late Payment Fee	\$25.00
November 26 – January 23 Hydro	\$129.21
November 26 – January 23 Hydro – Late Payment Fee	\$25.00
December 21 – April 30 Surrey Water Bill Portion	\$55.76
December 21 – April 30 Surrey Water Bill Portion Late Payment Fee	\$25.00
January 24 – March 18 Hydro	\$115.15
January 24 – March 18 Hydro Late Payment Fee	\$25.00
Residential Tenancy Branch Dispute Resolution Filing Fee	\$100.00

The landlord also attempted to amend their claim for registered mail costs, which I dismissed during the hearing as the Act does not provide a remedy for the recovery of the cost of registered mail costs.

The landlord testified that the tenant provided notice that they were vacating the rental unit dated October 21, 2019, which was received by the landlord either October 21 or 22, 2019. The landlord testified that they attempted to re-rent the rental unit by posting an ad the rental unit for the same amount of monthly rent on October 22, 2019. The landlord testified that the rental ad was renewed weekly and that rent was eventually reduced to \$1,200.00 per month; however, new tenants were not found until March 19, 2020.

The landlord confirmed that they are seeking not only late fees for rent of \$25.00 per month as noted above, but also a late fee for utilities of \$25.00 per month, which I advised the landlord I would deal with in this decision. The landlord also clarified that for March 2020 rent, as the landlord was able to secure new tenants who moved in as of March 19, 2020 that rent for March 2020 was reduced from \$1,250.00 to \$766.00 as the landlord received \$484.00 from the new tenants for March 2020.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, and as noted above, I consider this matter to be unopposed by the tenant.

I will first address the landlord's claim for a late rent fee of \$25.00 per month for the period claimed and a \$25.00 for late utility payments. Section 7(1)(d) of the *Residential Tenancy Regulation* applies and states:

Non-refundable fees charged by landlord

7(1)A landlord may charge any of the following non-refundable fees:

(d)subject to subsection (2), **an administration fee of not more than \$25** for the return of a tenant's cheque by a financial institution or for late payment of rent;
[Emphasis added]

I find the Regulation does not allow the amount to increase to \$50.00 per month for late utility payments and as a result, I dismiss all late utility payments due to insufficient evidence, without leave to reapply. I am satisfied that late rent fees can be charged for the time period claimed noted above and as a result, I find that the landlord's claim is fully successful, with the exception of the dismissed late utility fees charged of \$25.00 for each of the months claimed as follows:

November 2019 Rent	\$1,250.00
November 2019 Rent – Late Payment Fee	\$25.00
November 1 – November 25 BC Hydro Bill Portion	\$50.62
November 1 – November 25 BC Hydro Bill Portion Late Fee	dismissed
December 2019 Rent	\$1,250.00
December 2019 Rent – Late Payment Fee	\$25.00
November 1- December 20 Surrey Water Bill Portion	\$11.90
November 1 - December 20 Surrey Water Bill Portion Late Payment Fee	dismissed
January 2020 Rent	\$1,250.00
January 2020 Rent – Late Payment Fee	\$25.00
February 2020 Rent	\$1,250.00
February 2020 Rent – Late Payment Fee	\$25.00
March 2020 Rent	\$766.00
March 2020 Rent – Late Payment Fee	\$25.00
November 26 – January 23 Hydro	\$129.21
November 26 – January 23 Hydro – Late Payment Fee	dismissed
December 21 – April 30 Surrey Water Bill Portion	\$55.76
December 21 – April 30 Surrey Water Bill Portion Late Payment Fee	dismissed
January 24 – March 18 Hydro	\$115.15
January 24 – March 18 Hydro Late Payment Fee	dismissed
Residential Tenancy Branch Dispute Resolution Filing Fee	\$100.00

I find the tenant breached section 26 of the Act by failing to pay rent when it was due in accordance with the tenancy agreement. I find the tenant also breached section 45(2) of the Act, which applies and states:

Tenant's notice

45(2)A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

[Emphasis added]

Based on the above, I find the earliest the tenant could have ended the tenancy without penalty was November 30, 2020, which the tenant failed to do and owes the landlord as a result.

I find the landlord has established a total monetary claim of **\$6,353.64**, and I authorize the landlord to retain the tenant's full security deposit of \$625.00 including \$0.00 in interest, in partial satisfaction of the landlord's monetary claim. In this amount I have included the filing fee of \$100.00 as I find the landlord's claim had merit and that pursuant to section 72 of the Act, I grant the landlord the recovery of the cost of the filing fee. I grant the landlord a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of **\$5,728.64**.

The registered mail costs are dismissed without leave to reapply, as I find there is no remedy for such costs under the Act.

I caution the tenant to comply with sections 26 and 45(2) of the Act in the future.

Conclusion

The landlord's application is mostly successful.

The landlord has established a total monetary claim of \$6,353.64, and the tenant has been authorized to retain the tenant's full security deposit of \$625.00 including \$0.00 in interest, in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of \$5,728.64. The landlord must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision will be emailed to the parties. The monetary order will be emailed to the landlord only for service on the tenant.

The tenant has been cautioned as noted above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 2, 2020

Residential Tenancy Branch